

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEVIN KUNEMUND,

Plaintiff,

v.

MOUNTAIN VIEW HOSPITAL, et al.,

Defendants.

2:10-CV-1465 JCM (LRL)

ORDER

Presently before the court is defendant Sunrise Mountain View Hospital's motion to dismiss for lack of prosecution. (Doc. #49). To date, the plaintiff has not filed a response.

On February 23, 2011, plaintiff filed a motion to amend his complaint. (Doc. #43). Defendant Mountain View opposed the amendment of claims two and three, alleging that each failed to state a claim upon which relief could be granted. (Doc. #45). The court agreed, and by order dated April 8, 2011, instructed plaintiff to file with the court and serve the revised amended complaint as to the remaining claims. (Doc. #48).

Defendant argues that the complaint should be dismissed because plaintiff has both failed to prosecute and failed to abide by court orders. (Doc. #45). The court agrees. Federal Rule of Civil Procedure 41(b) permits dismissal of a complaint for (1) failure of the plaintiff to prosecute; (2) failure to comply with the Federal Rules of Civil Procedure; or (3) failure to comply with an order of the court. Here, plaintiff has failed to file and serve the amended complaint as directed in this court's April 8, 2011, order (doc. #48).

1 Plaintiff has also failed to respond to defendant's motion to dismiss. Pursuant to Local Rule
2 7-2(b), an opposing party's failure to file a timely response to any motion constitutes the party's
3 consent to the granting of the motion and is proper grounds for dismissal. *U.S. v. Warren*, 601 F.2d
4 471, 474 (9th Cir. 1979). However, prior to dismissal, the district court is required to weigh several
5 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases of their merits; and (5) the availability of less drastic sanctions." *Ghazali v.*
8 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

9 Thus, in light of the plaintiff's failure to comply with court orders, failure to respond to
10 defendant's motion, and weighing the factors identified in *Ghazali*, the court finds dismissal
11 appropriate.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to
14 dismiss (doc. #49) is GRANTED;

15 IT IS FURTHER ORDERED that the case is hereby dismissed as to defendant Mountain
16 View Hospital.

17 DATED June 14, 2011.

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20 UNITED STATES DISTRICT JUDGE